



County of Los Angeles CHIEF EXECUTIVE OFFICE

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June 5, 2009

To: Supervisor Don Knabe, Chairman
Supervisor Gloria Molina
Supervisor Mark Ridley-Thomas
Supervisor Zev Yaroslavsky
Supervisor Michael D. Antonovich

From: William T Fujioka
Chief Executive Officer

BENEFITS FOR SUBCONTRACT HOUSEKEEPING CONTRACTS

On May 13, 2009, your Board instructed the Chief Executive Officer to report back on whether all housekeeping contracts contain Living Wage Ordinance (LWO) provisions, and to review all other LWO contracts to determine if there are any provisions that do not create an automatic adjustment for maintenance of a living wage standard.

Living Wage Ordinance

The LWO was adopted by your Board and went into effect in July of 1999 as County Code 2.201, Living Wage Program (Attachment I). The living wage rate was adjusted in February of 2007 and became effective in June of 2007, establishing \$11.84 as the minimum hourly rate without health benefits, or \$9.64 as the minimum hourly rate with \$2.20 in health benefits. Since housekeeping contracts are considered Proposition "A" contracts, they are subject to LWO provisions. Under the terms of the LWO, an adjustment to the living wage rate does not create an automatic adjustment to existing contract payments or employee pay. Without sufficient planning and budget allocations, most departments will also be unable to provide the additional funding required for such automatic adjustments. However, in approving the living wage adjustment in 2007, your Board also revised County Code 2.201.040, mandating that all new rates be applied to living wage contract renewals and option years, and amendments of existing living wage contracts involving scope of work, term, or compensation. The revised ordinance provides sufficient time for departments to plan and accommodate the updated living wage rate.

"To Enrich Lives Through Effective And Caring Service"

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Intra-County Correspondence Sent Electronically Only*

Living Wage Program Report and Monitoring

The Office of Affirmative Action Compliance (OAAC) is responsible for monitoring compliance of the County's Living Wage Program, as well as preparing the Living Wage Program annual report to your Board. The annual report discusses OAAC's departmental monitoring activities, employer/employee monitoring activities, violations and actions taken, total cost of living wage contracts, and the review of living wage rates as provided by the Auditor-Controller. The OAAC also regularly provides regular LWO Compliance Monitoring and Training course to County employees.

Cost of Living Adjustments (COLA)

Certain living wage contracts may also contain COLA provisions per Board Policy 5.070, Multi-Year Services Contract Cost of Living Adjustments (Attachment II), and if included in the contract, would allow for contract payment adjustments on an annual basis. The inclusion of a COLA provision in a County contract is not a mandatory requirement, but rather the contracting department's business decision based on several factors, such as the nature of services contracted, market condition, and the department's history and experience in contracting for the particular service in question. Realizing the fact that a contractor receiving a cost of living adjustment under a County contract might not always result in a corresponding wage increase for the employees performing services under that contract, Board Policy 5.070 was revised in October of 2006 to remedy such concerns. Specifically, Policy 5.070 requires that all COLA provisions in living wage contracts exclude the cost of labor from the base upon which the COLA is calculated, unless the contractor can show that its labor costs will increase with such adjustment.

Exceptions to Living Wage Ordinance

Exceptions to the LWO, as set forth in County Code 2.201.090, include the following circumstances: (a) where the LWO is inconsistent with existing United States or California law; (b) where the LWO is superseded by a collective bargaining agreement (CBA); (c) where the employer is a nonprofit corporation qualified under Section 501(c) of the Internal Revenue Code; and (d) where the contractor is considered a "small business" as defined in the LWO. Several contractors have asked for CBA exemptions on living wage contracts, including the Department of Health Services' housekeeping contracts with Servicon. To qualify for a CBA exemption, the contractor must provide proof that the CBA supersedes all provisions of the County's Living Wage Program; however, in the event that a CBA supersedes only certain provisions of the LWO, the contractor will need to comply with remaining provisions under the County's Living Wage Program. Departments must obtain guidance from County Counsel to make a determination involving a CBA exemption. Departments are also requested by OAAC to annually verify the contractor's exempt status via a standard form. It is generally

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assumed that with a CBA in place, contractor employees would receive equal or better pay than the County's living wage rate. However, since the County is not a party to these CBAs, the County needs to rely on the bargaining unit to enforce a contractor's adherence to the CBA provisions.

Summary

In summary, all housekeeping contracts with the County contain LWO provisions. And while the living wage rate adjustment does not provide an instantaneous, automatic adjustment to existing contracts, applicable new contracts and existing contract amendments shall adhere to the new rate three months after the effective date of the adjustment, as approved by your Board.

If you have any questions or require further information on this matter, please contact Ellen Sandt, Deputy Chief Executive Officer at (213) 974-1186 or esandt@ceo.lacounty.gov.

WTF:EFS:MKZ
FC:KLG:pg

Attachments

c: Executive Officer, Board of Supervisors
County Counsel
Director, Internal Services Department

Title 2 ADMINISTRATION

Chapter 2.201 LIVING WAGE PROGRAM

2.201.010 Findings.

2.201.020 Definitions.

2.201.030 Prospective effect.

2.201.040 Payment of living wage.

2.201.050 Other provisions.

2.201.060 Employer retaliation prohibited.

2.201.070 Employee retention rights.

2.201.080 Enforcement and remedies.

2.201.090 Exceptions.

2.201.100 Severability.

2.201.010 Findings.

The board of supervisors finds that the county of Los Angeles is the principal provider of social and health services within the county, especially to persons who are compelled to turn to the county for such services. Employers' failure to pay a living wage to their employees causes them to use such services thereby placing an additional burden on the county of Los Angeles. (Ord. 2007-0011 § 1, 2007; Ord. 99-0048 § 1 (part), 1999.)

2.201.020 Definitions.

The general definitions contained in Chapter 2.02 shall be applicable to this chapter unless inconsistent with the following definitions:

A. "County" includes the county of Los Angeles, any county officer or body, any county department head, and any county employee authorized to enter into a Proposition A

contract or a cafeteria services contract with an employer.

B. "Employee" means any individual who is an employee of an employer under the laws of California, and who is providing full time services to an employer, some or all of which are provided to the county of Los Angeles under a Proposition A contract, or under a cafeteria services contract at a county of Los Angeles owned or leased facility.

C. "Employer" means:

1. An individual or entity who has a contract with the county:

a. For services which is required to be more economical or feasible under Section 44.7 of the Charter of the county of Los Angeles, and is not listed as an excluded contract in Section 2.121.250 B of the Los Angeles County Code, referred to in this chapter as a "Proposition A contract," or

b. For cafeteria services, referred to in this chapter as a "cafeteria services contract," and

c. Who has received or will receive an aggregate sum of \$25,000.00 or more in any 12 month period under one or more Proposition A contracts and/or one or more cafeteria services contracts; or

2. An individual or entity that enters into a subcontract with an employer, as defined in subsection C1 and who employs employees to provide services under the employer's contract with the county.

D. "Full time" means a minimum 40 hours worked per week, or a lesser number of hours, if the lesser number is a recognized industry standard and is approved as such by the chief administrative officer, but in no event less than 35 hours worked per week.

E. "Proposition A contract" means a contract governed by Title 2, Section 2.121.250 et seq. of this code, entitled Contracting with Private Business. (Ord. 2007-0011 § 2, 2007: Ord. 99-0048 § 1 (part), 1999.)

2.201.030 Prospective effect.

This chapter shall be applicable to Proposition A contracts and cafeteria services contracts and their amendments the terms of which commence three months or more after the effective date of this chapter.* It shall not be applicable to Proposition A contracts or cafeteria services contracts or their amendments in effect before this chapter becomes applicable. (Ord. 99-0048 § 1 (part), 1999.)

* **Editor's note:** Ordinance 99-0048, which enacted Ch. 2.201, is effective on July 22, 1999.

2.201.040 Payment of living wage.

A. Employers shall pay employees a living wage for their services provided to the county of no less than the hourly rates set under this chapter. The rates shall be \$9.64 per hour with health benefits, or \$11.84 per hour without health benefits.

B. To qualify for the living wage rate with health benefits, an employer shall pay at least \$2.20 per hour towards the provision of bona fide health care benefits for each employee and any dependents during the term of a Proposition A contract or a cafeteria services contract. Proof of the provision of such benefits must be submitted to the county for evaluation during the procurement process to qualify for the lower living wage rate in subsection A of this section. Employers who provide health care benefits to employees

through the county department of health services community health plan are deemed to have qualified for the lower living wage rate in subsection A of this section.

C. The board of supervisors may, from time to time, adjust the amounts specified in subsections A and B of this section, above for future contracts. Any adjustments to the living wage rate specified in subsections A and B that are adopted by the board of supervisors shall be applicable to Proposition A contracts and cafeteria services contracts and their amendments which become effective three months or more after the effective date of the ordinance that adjusts the living wage rate. (Ord. 2007-0011 § 3, 2007: Ord. 99-0048 § 1 (part), 1999.)

2.201.050 Other provisions.

A. Full Time Employees. An employer shall assign and use full time employees to provide services under a Proposition A contract or a cafeteria services contract, unless the employer can demonstrate to the county the necessity to use non-full time employees based on staffing efficiency or the county requirements of an individual job.

B. Neutrality in Labor Relations. An employer shall not use any consideration received under a Proposition A contract or a cafeteria services contract to hinder, or to further, organization of, or collective bargaining activities by or on behalf of an employer's employees, except that this restriction shall not apply to any expenditure made in the course of good faith collective bargaining, or to any expenditure pursuant to obligations incurred under a bona fide collective bargaining agreement, or which would otherwise be permitted under the provisions of the National Labor Relations Act.

C. Administration. The chief administrative officer shall be responsible for the administration of this chapter. The chief administrative officer may, with the advice of county counsel, issue interpretations of the provisions of this chapter. The chief administrative officer in conjunction with the affirmative action compliance officer shall issue written instructions on the implementation and on-going administration of this chapter. Such instructions may provide for the delegation of functions to other county departments.

D. Compliance Certification. An employer shall, during the term of a Proposition A contract, or a cafeteria services contract, report for each employee and certify the hours worked, wages paid, and amounts the employer paid for health benefits, and provide other information deemed relevant to the enforcement of this chapter by the county. Such reports shall be made at the times and in the manner set forth in instructions issued by the chief administrative officer in conjunction with the affirmative action compliance officer. The affirmative action compliance officer in conjunction with the chief administrative officer shall report annually to the board of supervisors on contractor compliance with the provisions of this chapter.

E. Contractor Standards. An employer shall demonstrate during the procurement process and for the duration of a Proposition A contract or a cafeteria services contract a history of business stability, integrity in employee relations, and the financial ability to pay a living wage. (Ord. 99-0048 § 1 (part), 1999.)

2.201.060 Employer retaliation prohibited.

No employer shall take an adverse action causing a loss of any benefit of employment, of any contract benefit, or any statutory benefit to any employee, person, or other entity, who has reported a violation of this chapter to the board of supervisors or to one or more of their offices, to the county chief administrative officer, or to the county auditor controller, or to the county department administering the Proposition A contract or cafeteria services contract. (Ord. 99-0048 § 1 (part), 1999.)

2.201.070 Employee retention rights.

In the event that any Proposition A contract or cafeteria service contract is terminated by the county prior to its expiration, any new contract with a subsequent employer for such services shall provide for the employment of the predecessor employer's employees as provided in this section.

A. A "retention employee" is an employee of a predecessor employer:

1. Who is not an exempt employee under the minimum wage and maximum hour exemptions defined in the federal Fair Labor Standards Act;
2. Who has been employed by an employer under a predecessor Proposition A contract or a predecessor cafeteria services contract for at least six months prior to the date of a new contract; and
3. Who is or will be terminated from his or her employment as a result of the county entering into a new contract.

B. Subsequent employers shall offer employment to all retention employees who are qualified for such jobs.

C. A subsequent employer is not required to hire a retention employee who:

1. Has been convicted of a crime related to the job or his or her job performance; or
2. Fails to meet any other county requirement for employees of a contractor.

D. A subsequent employer may not terminate a retention employee for the first 90 days of employment under a new contract, except for cause. Thereafter a subsequent employer may retain a retention employee on the same terms and conditions as the subsequent employer's other employees. (Ord. 99-0048 § 1 (part), 1999.)

2.201.080 Enforcement and remedies.

For violation of any of the provisions of this chapter:

A. An employee may bring an action in the courts of the state of California for damages caused by an employer's violation of this chapter.

B. The county department head responsible for administering a Proposition A contract or a cafeteria services contract may do one or more of the following in accordance with such instructions as may be issued by the chief administrative officer:

1. Assess liquidated damages as provided in the contract; and/or
2. Recommend to the board of supervisors the termination of the contract; and/or
3. Recommend to the board of supervisors that an employer be barred from award of future county contracts for a period of time consistent with the seriousness of the employer's violation of this chapter, in accordance with Section 2.202.040 of this code.

(Ord. 2007-0011 § 4, 2007: Ord. 99-0048 § 1 (part), 1999.)

2.201.090 Exceptions.

A. Other Laws. This chapter shall not be interpreted or applied to any employer or to any employee in a manner inconsistent with United States or California laws.

B. Collective Bargaining Agreements. Any provision of this chapter shall be superseded by a collective bargaining agreement that expressly so provides.

C. This chapter shall not be applied to any employer which is a nonprofit corporation qualified under Section 501(c)(3) of the Internal Revenue Code.

D. Small Businesses. This chapter shall not be applied to any employer which is a business entity organized for profit, including but not limited to any individual, partnership, corporation, joint venture, association or cooperative, which entity:

1. Is not an affiliate or subsidiary of a business dominant in its field of operation; and
2. Has 20 or fewer employees during the contract period, including full time and part time employees; and
3. Does not have annual gross revenues in the preceding fiscal year which if added to the annual amount of the contract awarded exceed \$1,000,000.00; or
4. If the business is a technical or professional service, does not have annual gross revenues in the preceding fiscal year which if added to the annual amount of the contract awarded exceed \$2,500,000.00.

"Dominant in its field of operation" means having more than 20 employees, including full time and part time employees, and more than \$1,000,000.00 in annual gross revenues or \$2,500,000.00 in annual gross revenues if a technical or professional service.

"Affiliate or subsidiary of a business dominant in its field of operation" means a business which is at least 20 percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation. (Ord. 99-0055 § 1, 1999: Ord. 99-0048 § 1 (part), 1999.)

2.201.100 Severability.

If any provision of this chapter is found invalid by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect. (Ord. 99-0048 § 1 (part), 1999.)

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ATTACHMENT II

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Los Angeles County

BOARD OF SUPERVISORS POLICY MANUAL

| Policy #: | Title: | Effective Date: |
|-----------|---|-----------------|
| 5.070 | Multi-Year Services Contract Cost of Living Adjustments | 04/01/97 |

PURPOSE

Provides guidelines for the use of cost of living adjustment (COLA) provisions in multi-year services contracts, establishes the maximum allowable COLA.

REFERENCE

April 1, 1997 Board Order, Synopsis 73

April 8, 1997 Chief Administrative Office memo, "Policy on Contract Cost of Living Adjustments (COLAs)"

April 25, 1997 Memo "New Policy on Contract Cost of Living Adjustments (COLAs)"

October 2, 2001 Board Order No. 76

January 29 2002, Chief Administrative Office letter, "Contracting Policy – Cost of Living Adjustments", Board Order No. 17

September 26, 2006 Board Order No. 26 and 27

October 17, 2006 Board Order Nos. 29, 30, and 31

POLICY

A COLA (Cost of Living Adjustments) is defined as any contract price increase during the term of a contract that is not a cost included in the initially negotiated contract price and is not for an increased service level or workload. A COLA reflects changes in the cost of doing business based on inflation.

COLA provisions in contracts are not mandatory; a department's determination to recommend the use of COLAs shall be a business decision based on such factors as the nature of the services contracted, the market, and the department's history and experience contacting the specific service. If a services contract is developed as a result of a solicitation and the department decides to recommend the use of COLAs, the department must include the applicable COLA language in the solicitation document.

The following policy language shall be incorporated in substantially similar form into solicitations and contracts that include COLA provisions:

"The contract (hourly, daily, monthly, etc.) amount may be adjusted annually based on the increase or decrease in the U.S. Department of Labor, Bureau of Labor Statistics' Consumer Price Index (CPI) for the Los Angeles-Riverside-Orange County Area for the most recently published percentage change for the 12-month period preceding the contract anniversary date, which shall be the effective date for any cost of living adjustment. However, any increase shall not exceed the general salary movement granted to County employees as determined by the Chief Administrative Office as of each July 1 for the prior 12-month period. Furthermore, should fiscal circumstances ultimately prevent the Board from approving any increase in County employee salaries, no cost of living adjustments will be granted. Where the County decides to grant a Cost of Living Adjustment pursuant to this paragraph for living wage contracts, it may, in its sole discretion exclude the cost of labor (including the cost of wages and benefits paid to employees providing services under this contract) from the base upon which a COLA is calculated, unless the contractor can show that his/her labor cost will actually increase."

The above calculations establish the "COLA cap." No COLA may be granted that exceeds the COLA cap, but lesser or no COLA may be appropriate depending on the specific contract.

When COLA provisions are recommended in a contract, the contracting department shall indicate this in the Board letter recommending the contract award in the **CONTRACTING PROCESS** section and specify whether the contract language complies with County policy. The contract award recommendation shall not include actual COLA dollar increases for any subsequent contract or optional extension year because the information necessary to calculate the COLA cap is not known for future years.

Departments shall discuss with Board offices any contract recommendation that does not comply with the County's COLA policy in advance of issuing the solicitation.

RESPONSIBLE DEPARTMENT

Chief Administrative Office

Internal Services Department

DATE ISSUED/SUNSET DATE

Issue Date: April 1, 1997

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Review Date: January 19, 2006

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